

FILED  
IN THE UNITED STATES DISTRICT COURT ~~BILLINGS DIV.~~

FOR THE DISTRICT OF MONTANA ~~JAN 25 PM 12 18~~

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY

ELAINE L. CHAO, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,	)	CV-07-15-BLG-RFC	DEPUTY CLERK
	)		
Plaintiffs	)		
	)		
vs.	)		
	)		
DIVERSIFIED TRANSFER & STORAGE, INC., d/b/a DTS, and DTS LOGISTICS, LLC, and JAY FOLEY, individually,	)	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE	
	)		
Defendants.	)		
	)		

On January 2, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation. Magistrate Judge Ostby recommends this Court grant Defendant DTS Logistics' Motion for Summary Judgment (*Doc. 17*). *Doc. 26*.

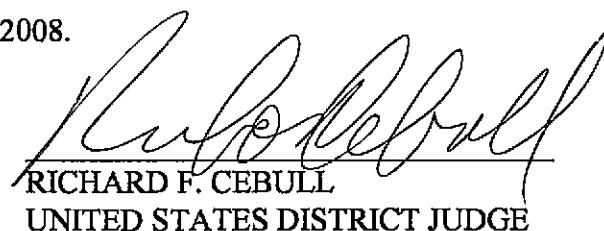
Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the January 2, 2007 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Here, Magistrate Judge Ostby correctly concluded as a matter of law that DTS Logistics is not a joint employer of the subject employees. Specifically, even though the concept of joint employment is to be defined expansively under the Fair Labor Standards Act of 1938 ("FLSA"), *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997), none of the four factors identified by the Ninth Circuit as relevant to the issue of joint employment are present in this case. *See Bonnette v. Ca. Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983) (disapproved of on other grounds by *Garcia v. San Antonio Met. Trans. Auth.*, 469 U.S. 528 (1984)). Further, this situation is not analogous to the examples contained in the administrative regulations promulgated pursuant to the FLSA. *See* 29 C.F.R. § 791.2(b) (2007).

Accordingly, after a review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety. **IT IS HEREBY ORDERED** that DTS Logistics' Motion for Summary Judgment (*Doc. 26*) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 25 day of January, 2008.



RICHARD F. CEBULL  
UNITED STATES DISTRICT JUDGE